

1  
2  
3  
4  
5  
6  
7  
8  
9 Honorable Marsha J. Pechman  
10

11 UNITED STATES DISTRICT COURT  
12 WESTERN DISTRICT OF WASHINGTON AT SEATTLE  
13

14 DIANNE L. KELLEY and KENNETH  
15 HANSEN,

16 NO. C07-0475 MJP  
17

18 Plaintiffs,  
19 v.  
20

21 DECLARATION OF JEFFREY M.  
22 THOMAS IN OPPOSITION TO  
23 MICROSOFT'S MOTION TO STAY  
24 PROCEEDINGS  
25

26 MICROSOFT CORPORATION, a Washington  
27 Corporation,  
28

29 CLASS ACTION  
30

31 Defendant.  
32

33 *Noted on Motion Calendar:*  
34 March 21, 2008  
35

36 I, Jeffrey M. Thomas, declare as follows:  
37

38 1. *Identity and Competency.* I am an attorney with the law firm of Gordon Tilden  
39 Thomas & Cordell, LLP. Together with Keller Rohrback, LLP, we represent the plaintiffs.  
40

41 2. *Opposition to Microsoft's Rule 23(f) Petition.* Plaintiffs are opposing  
42 Microsoft's Petition for Permission to Appeal. Upon the filing of our opposition, we will file a  
43 copy in this Court linked to the papers on Microsoft's motion for a stay.  
44

45 3. *Third-Party Subpoenas and Response Thereto.* On or about March 6, 2008, we  
46 served a number of subpoenas on OEMs, retailers, and others. Each subpoena was substantially  
47 similar. By way of example, attached as Exhibit D is a true and correct copy of the subpoena we  
48 served on Office Max. Following service, I have spoken personally with representatives of a  
49

50 DECLARATION OF JEFFREY M. THOMAS IN  
51 OPPOSITION TO MICROSOFT'S MOTION TO STAY  
52 PROCEEDINGS - 1  
53 No. C07-0475 MJP

54 GORDON TILDEN THOMAS & CORDELL LLP  
55 1001 Fourth Avenue, Suite 4000  
56 Seattle, WA 98154  
57 Phone (206) 467-6477  
58 Fax (206) 467-6292

1 number of the subpoenaed parties. To date, not a single one has expressed a concern that  
 2 responding to the subpoenas would somehow "disrupt" their business relationship with  
 3 Microsoft. Indeed, most representatives have expressed their appreciation in receiving: (a) a  
 4 carefully prepared subpoena; (b) a longer than typical requested turn-around date; and (c) an  
 5 invitation to discuss any production issues informally as is set forth in the cover letter.  
 6

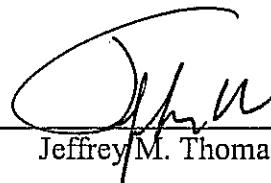
7       4. ***Streamlined Merits Discovery/Trial Preparation.*** To date, we have taken one  
 8 30(b)(6) deposition and have propounded only six interrogatories. Because prior discovery was  
 9 limited to matters relevant to class certification, we only have just begun merits discovery. We  
 10 will endeavor to maintain a streamlined approach to merits discovery in an effort to be ready to  
 11 try this case in October 2008. We view matters like "driving up litigation costs" as a distraction  
 12 that would not aid our abilities to be trial-ready in October.  
 13

14       5. ***Authentication of Documents.*** Attached as exhibits are true and correct copies of  
 15 the following documents:

<u>Exhibit Name</u>	<u>Tab</u>
Seattle P-I Article, "Suit says Microsoft knew it misled: E-mails raised Vista doubts," dated February 8, 2008	A
Sunday New York Times Article (web version), "They Criticized Vista. And They Should Know," dated March 9, 2008	B
Printout from Microsoft's website re: Microsoft document management software	C
Subpoena served on Office Max, with cover letter, dated March 6, 2007	D
Discovery requests served on Microsoft on March 11, 2008 (without exhibits attached)	E
PC World Article reprinted in Washington Post (web version), "Microsoft submits Windows 7 for US antitrust review," dated March 12, 2008	F

1 I declare under penalty of perjury that the foregoing is true and correct.  
2  
3 Executed this 17th day of March, 2008, at Seattle, Washington.  
4  
5  
6  
7  
8  
9

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45



Jeffrey M. Thomas

DECLARATION OF JEFFREY M. THOMAS IN  
OPPOSITION TO MICROSOFT'S MOTION TO STAY  
PROCEEDINGS - 3  
No. C07-0475 MJP

GORDON TILDEN THOMAS & CORDELL LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154  
Phone (206) 467-6477  
Fax (206) 467-6292

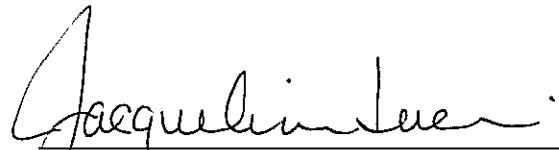
1  
2 **CERTIFICATE OF SERVICE**  
3

4 I hereby certify that on March 17, 2008, I electronically filed the foregoing with the Clerk  
5 of the Court using the CM/ECF system, which will send notification of such filing to the  
6 following.  
7

8 Counsel for Defendant Microsoft Corporation Counsel for Defendant Microsoft Corporation  
9 – Admitted Pro Hac Vice

10 Stephen M. Rummage, WSBA #11168  
11 Cassandra L. Kinkead, WSBA #22845  
12 Charles S. Wright, WSBA #31940  
13 Davis Wright Tremaine LLP  
14 1201 Third Avenue Suite 2200  
15 Seattle, Washington 98101-3045  
16 steverummage@dwt.com  
17 cassandra@kinkead@dwt.com  
18 charleswright@dwt.com

Charles B. Casper  
Montgomery, McCracken, Walker & Rhoads  
123 South Broad Street  
Philadelphia, PA 19109  
ccasper@mmwr.com

22  
23   
24  
25

26 Jacqueline Lucien, Legal Secretary  
27 Gordon Tilden Thomas & Cordell LLP  
28 1001 Fourth Avenue, Suite 4000  
29 Seattle, WA 98154-1007  
30 Telephone: (206) 467-6477  
31 Facsimile: (206) 467-6292  
32 Email: j lucien@gordontilden.com  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

DECLARATION OF JEFFREY M. THOMAS IN  
OPPOSITION TO MICROSOFT'S MOTION TO STAY  
PROCEEDINGS - 4  
No. C07-0475 MJP

GORDON TILDEN THOMAS & CORDELL LLP  
1001 Fourth Avenue, Suite 4000  
Seattle, WA 98154  
Phone (206) 467-6477  
Fax (206) 467-6292